

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANCISCO LORA,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.
----- x

07 Civ. 6936 (JSR)

ORDER

USDC SDNY
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JED S. RAKOFF, U.S.D.J.

On October 18, 2007, the Honorable Gabriel W. Gorenstein, United States Magistrate Judge, issued a Report and Recommendation ("First Report") in the above-captioned case recommending that the petition be dismissed as time-barred because petitioner had failed to comply with the terms of Chief Judge Wood's 60 Day Order issued on August 2, 2007. Subsequent to the issuance of the First Report, the Court then received an affirmation from petitioner, dated August 11, 2007, that appeared to be responsive to the August 2, 2007 Order. Judge Gorenstein reviewed the affirmation, assumed that it had been timely submitted, and proceeded to adjudicate the timeliness of the habeas petition on the merits. Without knowledge that the above-captioned case had been reassigned to the undersigned, or that the First Report had been issued by Judge Gorenstein, Judge Wood, on November 5, 2007, entered a Judgment dismissing the petition for failure to respond to her August 2nd Order. Because petitioner's affirmation dated August 11, 2007 does appear to be responsive to the August 2nd Order, that judgment is hereby vacated. On November 19, 2007, Judge Gorenstein then issued a Second Report and Recommendation ("Second Report")

recommending that the petition be dismissed as untimely because petitioner's affirmation had presented no rare and exceptional circumstances that would justify equitably tolling the one year habeas corpus limitations period.

Plaintiff has failed to file any objection to the substance of Judge Gorenstein's Second Report¹ and, for that reason alone, has waived any right to review by this Court. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002). Accordingly, the Court hereby adopts the Second Report and Recommendation in full, dismissing the petition as time-barred.

SO ORDERED.


JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
February 27, 2008

¹ Plaintiff did submit, on November 29, 2007, what can be construed as an objection to Judge Gorenstein's First Report. The letter, which is addressed to Judge Wood (Docket #7) states that Judge Gorenstein's decision "was based on the mistaken belief . . . that I had never responded to your Honor's Order to Show Cause." Because Judge Gorenstein's Second Report clearly considered petitioner's response to the August 2nd Order, and discussed that response in detail, the November 29th letter cannot be construed as an objection to Judge Gorenstein's Second Report.